

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

SENTENCING

FEBRUARY 10, 2014

CHIEF DISTRICT JUDGE JAMES C. DEVER III

APPEARANCES:

MS. YOLANDA DEE MCCRAY-JONES
ASSISTANT UNITED STATES ATTORNEY
310 NEW BERN AVENUE
RALEIGH, NC 27601
(FOR THE GOVERNMENT)

MR. ROBERT E. WATERS
ASSISTANT FEDERAL PUBLIC DEFENDER
150 FAYETTEVILLE STREET
SUITE 450
RALEIGH, NC 27601
(FOR THE DEFENDANT)

SHARON K. KROEGER, COURT REPORTER
MACHINE SHORTHAND REPORTER, COMPUTER AIDED TRANSCRIPTION

1 THE COURT: WE WILL NEXT TAKE UP THE
2 SENTENCING OF MICHAEL WALCOTT.

3 MS. MCCRAY-JONES, IS THE UNITED STATES READY?

4 MS. MCCRAY-JONES: YES, YOUR HONOR.

5 THE COURT: MR. WATERS, ARE YOU AND MR.
6 WALCOTT READY?

7 MR. WATERS: YES, YOUR HONOR.

8 THE COURT: AT THIS TIME, I WOULD ASK THAT MR.
9 WALCOTT BE SWORN.

10 (WHEREUPON, THE DEFENDANT WAS SWORN.)

11 THE COURT: MR. WALCOTT, DO YOU UNDERSTAND
12 THAT HAVING BEEN SWORN, THAT YOUR ANSWERS TO MY QUESTIONS
13 ARE SUBJECT TO THE PENALTY OF PERJURY, SIR?

14 THE DEFENDANT: YES, YOUR HONOR.

15 THE COURT: HAVE YOU TAKEN ANY KIND OF
16 MEDICINE, OR ANY OTHER SUBSTANCE IN THE LAST 48 HOURS
17 THAT WOULD AFFECT YOUR ABILITY TO HEAR AND UNDERSTAND
18 THESE PROCEEDINGS?

19 THE DEFENDANT: NO, YOUR HONOR.

20 THE COURT: DO YOU KNOW WHY YOU ARE HERE
21 TODAY?

22 THE DEFENDANT: YES.

23 THE COURT: MR. WATERS, DO YOU HAVE ANY REASON
24 TO DOUBT MR. WALCOTT'S COMPETENCE TO GO FORWARD TODAY?

25 MR. WATERS: NO, YOUR HONOR.

1 THE COURT: DOES THE GOVERNMENT HAVE ANY
2 REASON TO DOUBT MR. WALCOTT'S COMPETENCE TO GO FORWARD
3 TODAY?

4 MS. MCCRAY-JONES: NO, YOUR HONOR.

5 THE COURT: BASED ON MR. WALCOTT'S ANSWERS TO
6 MY QUESTIONS, MY OBSERVATIONS OF MR. WALCOTT, AND THE
7 ANSWERS FROM COUNSEL, I FIND THAT MR. WALCOTT IS
8 COMPETENT TO GO FORWARD HERE TODAY.

9 MR. WALCOTT, AS YOU KNOW, YOU ARE HERE TODAY
10 HAVING ENTERED A PLEA OF GUILTY TO THE CHARGE OF
11 POSSESSION OF CHILD PORNOGRAPHY. YOU ENTERED A PLEA OF
12 GUILTY TO THAT CHARGE IN THIS COURT.

13 IN LIGHT OF SOME CASE FROM THE SUPREME COURT
14 OF THE UNITED STATES, INCLUDING THE BOOKER, RITA, GALL,
15 KIMBROUGH, SPEARS AND NELSON CASES, THE GUIDELINES ARE NO
16 LONGER MANDATORY. THEY ARE ADVISORY.

17 NEVERTHELESS, IN ACCORDANCE WITH THOSE CASES
18 AND SOME CASES FROM THE FOURTH CIRCUIT INTERPRETING THEM,
19 INCLUDING THE CARTER, PAWLEY AND EVANS CASES, A
20 SENTENCING COURT STILL MUST TAKE INTO ACCOUNT THE NOW
21 ADVISORY GUIDELINES.

22 THE COURT DOES THIS BY INITIALLY MAKING
23 FINDINGS OF FACT AND CALCULATING AN ADVISORY GUIDELINE
24 RANGE. THE COURT WILL THEN CONSIDER ANY MOTION THAT
25 MIGHT BE MADE THAT MIGHT MOVE THE RANGE EITHER UP OR

1 DOWN.

2 I WILL THEN CONSIDER ALL ARGUMENTS YOUR LAWYER
3 MAKES ON YOUR BEHALF, ANY STATEMENT YOU WOULD LIKE TO
4 MAKE, AND ALL ARGUMENTS THAT THE ASSISTANT UNITED STATES
5 ATTORNEY MAKES.

6 I WILL THEN DETERMINE YOUR SENTENCE AND
7 ANNOUNCE IT HERE IN COURT TODAY. THAT WILL BE THE
8 PROCESS WE WILL FOLLOW.

9 MR. WATERS, DID YOU RECEIVE A COPY OF THE
10 PRESENTENCE REPORT, SIR?

11 MR. WATERS: YES, YOUR HONOR.

12 THE COURT: MR. WALCOTT, DID YOU RECEIVE A
13 COPY OF THAT REPORT, SIR?

14 THE DEFENDANT: YES, YOUR HONOR.

15 THE COURT: DID YOU SPEAK WITH MR. WATERS,
16 YOUR LAWYER, ABOUT THE REPORT?

17 THE DEFENDANT: YES, YOUR HONOR.

18 THE COURT: AT THIS TIME, THE COURT DIRECTS
19 THAT THE PRESENTENCE REPORT BE PLACED IN THE RECORD UNDER
20 SEAL. IN CORRESPONDENCE WITH THE FEDERAL RULES OF
21 CRIMINAL PROCEDURE, THE COURT ACCEPTS AS ACCURATE THE
22 PRESENTENCE REPORT EXCEPT AS TO MATTERS IN DISPUTE AS SET
23 FORTH IN THE ADDENDUM.

24 I HAVE REVIEWED THE ENTIRE REPORT, INCLUDING
25 THE ADDENDUM. THE ADDENDUM INDICATES THERE ARE NO

1 OBJECTIONS FROM EITHER THE GOVERNMENT OR THE DEFENSE.

2 MR. WATERS, IS IT STILL THE CASE, NO

3 OBJECTIONS FROM THE DEFENSE?

4 MR. WATERS: THAT'S CORRECT, YOUR HONOR.

5 THE COURT: IS THAT CORRECT, MR. WALCOTT?

6 THE DEFENDANT: YES, YOUR HONOR.

7 THE COURT: NO OBJECTION FROM THE GOVERNMENT?

8 MS. MCCRAY-JONES: NO OBJECTIONS, YOUR HONOR.

9 THE COURT: ALL RIGHT. FOR PURPOSES OF BOOKER
10 AND ITS PROGENY, THE COURT CALCULATES THE ADVISORY
11 GUIDELINE RANGE AS FOLLOWS. THE TOTAL OFFENSE LEVEL IS
12 30. THE CRIMINAL HISTORY CATEGORY IS II. THE ADVISORY
13 GUIDELINE RANGE IS 108 TO 120 MONTHS.

14 DOES THE GOVERNMENT OBJECT TO THAT ADVISORY
15 GUIDELINE RANGE?

16 MS. MCCRAY-JONES: NO, YOUR HONOR.

17 THE COURT: DOES THE DEFENSE OBJECT TO THAT
18 ADVISORY GUIDELINE RANGE?

19 MR. WATERS: NO, YOUR HONOR.

20 THE COURT: AND, OF COURSE, THE STAT MAX
21 PROVIDES THE CAP AT THE TOP END OF THAT ADVISORY
22 GUIDELINE RANGE.

23 I HAVE RECEIVED AND REVIEWED THE LETTERS THAT
24 HAVE BEEN SUBMITTED, THAT MR. WATERS SUBMITTED. I THANK
25 THE PEOPLE WHO WROTE IN ON BEHALF OF MR. WALCOTT.

1 AT THIS TIME, I WILL HEAR FIRST FROM MR.
2 WATERS. I WILL THEN HEAR FROM MR. WALCOTT. I WILL THEN
3 HEAR FROM MS. MCCRAY-JONES.

4 MR. WATERS.

5 MR. WATERS: THANK YOU, YOUR HONOR. OF
6 COURSE, AS IT'S SET FORTH IN THE PSR, MR. WALCOTT PLED
7 PURSUANT TO A PLEA AGREEMENT WHICH CONTAINED A SENTENCING
8 RECOMMENDATION THAT BOTH I AND COUNSEL FOR THE GOVERNMENT
9 SIGNED OFF ON.

10 THAT PLEA AGREEMENT WAS ENTERED AFTER A LOT OF
11 NEGOTIATION WITH MS. MCCRAY-JONES AND HER PREDECESSOR AND
12 IT WAS VOLUNTARILY ENTERED INTO AND I STILL STAND BY IT;
13 HOWEVER, AS THE COURT ISN'T BOUND BY IT AND THE COURT
14 DOES HAVE AN OBLIGATION TO IMPOSE A SENTENCE NOT GREATER
15 THAN NECESSARY TO ACHIEVE THE PURPOSES OF THE SENTENCING
16 ACT, WE WOULD ASK THE COURT TAKE INTO CONSIDERATION SOME
17 CHARACTERISTICS AND FACTORS.

18 FIRST, OF COURSE, IS THE FACT THAT MR. WALCOTT
19 IS STILL A VERY YOUNG MAN. HE IS 31 YEARS OLD. HE IS IN
20 THE SECOND LOWEST CRIMINAL HISTORY CATEGORY, HAVING ONLY
21 A SINGLE CRIMINAL HISTORY POINT ASSESSED AGAINST HIM FOR
22 A MISDEMEANOR CONVICTION.

23 HE HAS, OF COURSE, TWO OTHER POINTS BECAUSE OF
24 THE RECENCY OF THAT CONVICTION, BUT ACTUAL -- FOR ACTUAL
25 ACTS THAT HE HAS COMMITTED, HE HAS A SINGLE CRIMINAL

1 HISTORY POINT. HE HAS NEVER BEEN INVOLVED IN ANY FELONY
2 CONVICTIONS. HE HAS NEVER BEEN INVOLVED IN ANY FEDERAL
3 VIOLATIONS AT ALL.

4 HE SERVED HIS COUNTRY IN THE UNITED STATES
5 ARMY, ENLISTING TWICE, AND WAS DISCHARGED THE SECOND TIME
6 WITH A MEDICAL DISCHARGE.

7 HE HAS A VERY STRONG FAMILY SUPPORT NETWORK AS
8 YOUR HONOR WILL HAVE SEEN FROM THE LETTERS THAT WERE
9 SUBMITTED. SOME MEMBERS OF HIS FAMILY ARE HERE TODAY --
10 HIS MOTHER, WHO CAME HERE FROM GERMANY, HIS FATHER WHO
11 ALSO SERVED IN THE UNITED STATES ARMY, HIS WIFE AND
12 MEMBERS OF HER FAMILY, AND OTHER MEMBERS OF HIS FAMILY.
13 IF YOU COULD ALL STAND UP SO THE COURT COULD RECOGNIZE
14 YOU. HE HAS A SUPPORT NETWORK.

15 HE HAS THE KNOWLEDGE THAT HE HAS MADE A VERY
16 VERY SERIOUS MISTAKE AND HE KNOWS IT. HE HAS NEVER BEEN
17 IN THIS KIND OF TROUBLE BEFORE, YOUR HONOR.

18 AS TO THE KIND AND NATURE OF THE SENTENCE,
19 OPTIONS THAT ARE AVAILABLE TO YOUR HONOR, INCLUDING THE
20 GUIDELINE RANGE, I WOULD SIMPLY NOTE THAT MANY OF THE
21 ENHANCEMENTS THAT WE DID STIPULATE TO IN THE PLEA
22 AGREEMENT ARE ENHANCEMENTS THAT THE SENTENCING COMMISSION
23 ITSELF ACKNOWLEDGES ARE NO LONGER -- NO LONGER SERVE THE
24 PURPOSE THAT THEY WERE INTENDED FOR, TO DISTINGUISH
25 BETWEEN OFFENDERS AND THE CIRCUMSTANCES OF THEIR

1 OFFENSES.

2 NOW, MANY OF THESE ENHANCEMENTS APPEAR IN ALL
3 OR ALMOST ALL CASES. THE TWO POINT ENHANCEMENT FOR USE
4 OF THE COMPUTER. THESE ARE JUST THINGS THAT NO LONGER
5 SERVE TO GIVE THE COURT INFORMATION THAT IT COULD USE TO
6 DISTINGUISH MR. WALCOTT FROM ANYONE ELSE WHO WAS CHARGED
7 WITH THE SAME CHARGE.

8 SO WE ASK THE COURT LOOK AT MR. WALCOTT, LOOK
9 AT HIS HISTORY, LOOK AT THE CIRCUMSTANCES OF THE OFFENSE,
10 AND IMPOSE A SENTENCE THAT IS NOT GREATER THAN NECESSARY
11 IN THIS CASE.

12 THE COURT: THANK YOU. AT THIS TIME, I WILL
13 HEAR FROM MR. WALCOTT IF YOU WOULD LIKE TO MAKE A
14 STATEMENT, SIR.

15 THE DEFENDANT: WELL, I AM NOT HERE TO MAKE
16 ANY EXCUSES. I JUST, YOU KNOW, THERE IS A LOT THAT I WAS
17 TRYING TO DO. I WAS TRYING TO GO TO SCHOOL, SOMETHING I
18 SHOULD HAVE DONE WHEN I GOT OUT OF THE MILITARY.

19 THE COURT: SO YOU GOT A GENERAL DISCHARGE
20 BECAUSE OF YOUR INJURIES AND THEN YOU TRIED TO WORK SOME
21 AND THEN YOU WENT BACK IN?

22 THE DEFENDANT: YES, YOUR HONOR. I WENT BACK
23 IN THINKING THAT I WOULD BE ABLE TO MAKE IT, AND I GOT
24 RE-INJURED.

25 THE COURT: WHERE DID THEY SEND YOU THE SECOND

1 TIME YOU WENT IN? WHERE DID YOU GO? WHERE WERE YOU
2 BASED? FORT JACKSON?

3 THE DEFENDANT: I WAS AT CAMP MCGREGOR, RIGHT
4 OUTSIDE OF FORT BLISS, TEXAS.

5 THE COURT: WHERE DID YOU GO THE FIRST TIME?

6 THE DEFENDANT: THE FIRST TIME -- WELL, I WENT
7 TO BASIC TRAINING AT FORT KNOX. I WENT TO A.I.T. AT FORT
8 LEE, VIRGINIA, AND MY FIRST DUTY STATION AT FORT WORTH.

9 THE COURT: WHAT WAS YOUR THE MOS THE FIRST
10 TIME THAT YOU WERE IN?

11 THE DEFENDANT: SUPPLIES AND LOGISTICS.

12 THE COURT: WERE YOU TRYING TO GET BACK IN
13 THAT WHEN YOU WENT IN THE SECOND TIME?

14 THE DEFENDANT: YES, YOUR HONOR. IT'S PRETTY
15 MUCH ALL I KNEW HOW TO DO. AS A MATTER OF FACT, BEFORE I
16 GOT ARRESTED HERE, I WAS ATTEMPTING TO GO INTO REHAB AND
17 I APPLIED FOR MY G.I. BILL TRYING TO GET TO SCHOOL, AND I
18 WAS WAITING FOR ALL OF THAT TO BE ACCEPTED.

19 THE COURT: YOU WERE LIVING ON POST AT YOUR
20 DAD'S HOUSE?

21 THE WITNESS: YES, YOUR HONOR.

22 THE COURT: HE WAS STILL ON ACTIVE DUTY AT THE
23 TIME, BUT HE HAS SINCE RETIRED?

24 THE DEFENDANT: YES, YOUR HONOR. MY FATHER
25 HAS BEEN IN THE MILITARY 30-PLUS YEARS. I WAS TRYING TO

1 DO THE SAME THING, BUT DIDN'T QUITE MAKE IT CONSIDERING
2 MY INJURIES.

3 THE COURT: HOW DID YOU GET HURT?

4 THE DEFENDANT: I GOT RAN OVER.

5 THE COURT: IN A TRAINING ACCIDENT?

6 THE DEFENDANT: NO, IT WAS AT THE WAREHOUSE.

7 I GOT RAN OVER.

8 THE COURT: WHAT POST?

9 THE DEFENDANT: FORT HOOD.

10 THE COURT: AND AT FORT HOOD?

11 THE DEFENDANT: YES, YOUR HONOR.

12 THE COURT: WHY DID YOU DO THIS?

13 THE DEFENDANT: I AM SORRY?

14 THE COURT: I SAID WHY DID YOU DO THIS? YOU
15 KNOW BETTER THAN THIS. WHY DID YOU DO THIS?

16 YOU KNOW THESE ARE REAL CHILDREN, RIGHT? I
17 MEAN, YOU KNOW THAT.

18 THE DEFENDANT: YES, YOUR HONOR.

19 THE COURT: I MEAN, THEY ARE REAL LITTLE
20 CHILDREN IN THESE VIDEOS AND YOU SERVED IN THE ARMY AND
21 YOU SERVED HONORABLY AND YOU CAME FROM AN ARMY FAMILY AND
22 EVERYBODY IN YOUR FAMILY KNOWS BETTER. AND HOW DID THIS
23 HAPPEN?

24 THE DEFENDANT: USING THE PROGRAM THAT I
25 DIDN'T HAVE ANY KNOWLEDGE OF IS BASICALLY WHAT HAPPENED.

1 THE COURT: BUT THEN YOU HAVE TO PUT IN SEARCH
2 TERMS, RIGHT? AT SOME LEVEL, I MEAN, IF YOU ARE GOING
3 OUT AND YOU ARE SEARCHING FOR PORNOGRAPHY AND THEN YOU
4 GET -- WELL, I MEAN, THESE ARE REAL.

5 THIS IS YOUR CHANCE TO ALLOCUTE. I AM JUST
6 TRYING TO UNDERSTAND. I HAVE GOT TAKE INTO ACCOUNT THE
7 PERSON AND I HAVE READ THE REPORT AND I AM FAMILIAR WITH
8 A LOT OF THE POSTS YOU HAVE MENTIONED, AND I CERTAINLY
9 KNOW THAT MOS AND I KNOW ABOUT SERVING.

10 AND I ALSO KNOW THAT EVERY CHILD IN EVERY ONE
11 OF THESE IMAGES, THE DAY THEY WOKE UP BEFORE THEY WERE
12 MOLESTED OR RAPED AND SOMEBODY VIDEOTAPED IT AND PUT IT
13 OUT ON THE INTERNET WHERE IT WILL BE FOREVER, IT IS
14 SOMETHING THAT TO EACH OF THOSE CHILDREN HAS CHANGED
15 THEIR LIFE FOREVER.

16 AND IT'S PERPLEXING TO ME, IN ALL CANDOR TO
17 YOU, HOW ANYBODY COULD LOOK AT THAT AND NOT BE REPULSED.

18 AND, IN FACT, FOR SOMEONE WHO SERVED IN THE
19 ARMY, HOW SOMEBODY COULDN'T SAY SOMEBODY NEEDS TO HELP
20 THESE CHILDREN WHO ARE REAL.

21 AND AGAIN, I AM JUST TRYING TO UNDERSTAND.
22 THIS TOOK PLACE OVER THE COURSE OF OCTOBER AND NOVEMBER
23 2011, RIGHT?

24 THE DEFENDANT: YES. AS SOON AS I SAW IT WAS
25 ON MY COMPUTER, I DELETED IT RIGHT AWAY. IT WAS OVER IN

1 THE COURSE OF A WEEK WHEN I SAW IT, AND WHEN I SAW IT, I
2 WAS TRYING TO GET RID OF IT, AND I DELETED THE PROGRAM
3 RIGHT AWAY. IT WAS ALL IN THE COURSE OF A WEEK.

4 THE COURT: WHAT ELSE DO YOU WANT TO TELL ME?

5 THE DEFENDANT: WELL, I WAS JUST TRYING TO --
6 BASICALLY, BEFORE ALL THIS HAPPENED, I WAS JUST TRYING TO
7 GET MY LIFE IN ORDER. AND I PROCRASTINATED FOR A LONG
8 PERIOD OF TIME AND IT WASN'T UNTIL IT WAS TOO LATE BEFORE
9 I REALIZED I NEEDED TO GET BACK ON TRACK. BUT I DID MAKE
10 THE STEPS NECESSARY TO TRY TO GET BACK ON TRACK AND UNTIL
11 I GOT ARRESTED, AND I JUST WANT TO PUT THIS BEHIND ME. I
12 WANT -- I WANT NOTHING TO DO WITH IT. AND I JUST WANT TO
13 MOVE ON WITH MY LIFE.

14 THE COURT: THANK YOU, MR. WALCOTT.

15 AT THIS TIME, I WILL HEAR FROM MS. MCCRAY-JONES.

16 MS. MCCRAY-JONES: YES, YOUR HONOR. PER THE
17 PLEA AGREEMENT, THE GOVERNMENT RECOMMENDS A TEN YEAR
18 SENTENCE AND TEN YEARS OF SUPERVISED RELEASE. I WOULD
19 LIKE TO MAKE THE COURT AWARE OF CERTAIN STATEMENTS THAT
20 THE DEFENDANT MADE WHILE HE WAS IN CONFINEMENT THAT
21 APPEAR TO BE INCONSISTENT WITH THE MANNER IN WHICH HE HAS
22 BEEN PORTRAYED IN SOME OF THE CHARACTER REFERENCES AND
23 ALSO INCONSISTENT WITH SOME OF THE STATEMENTS THAT THE
24 DEFENDANT JUST MADE TO THE COURT TODAY WITH RESPECT TO
25 THAT HE WAS ATTEMPTING TO DELETE RIGHT AWAY AND USING A

1 PROGRAM THAT HE HAD NO KNOWLEDGE OF.

2 YOUR HONOR, SPECIFICALLY, WHILE THE DEFENDANT
3 WAS IN CONFINEMENT, IN TERMS OF SOME OF THE THINGS THAT
4 WERE SAID IN THE CHARACTER REFERENCES, THEY WERE REFERRED
5 TO AS INADVERTENT. IT WASN'T DELIBERATELY OBTAINED. IT
6 WAS A ONE TIME THING AND THERE WOULDN'T BE REPEATED ACTS.

7 MR. WALCOTT INDICATED THAT OUTSIDE OF THIS
8 INCIDENT, WHILE HE WAS IN UTAH WITH HIS SECOND WIFE, THAT
9 SHE DISCOVERED A PICTURE OF CHILD PORNOGRAPHY AND ADULT
10 PORNOGRAPHY ON HIS COMPUTER THEN, WHICH WAS WHEN HE WAS
11 IN UTAH BEFORE HE CAME TO FORT BRAGG.

12 MR. WALCOTT ALSO INDICATED THAT HE WAS VERY
13 SMART WITH COMPUTERS AND THAT HE ATTEMPTED TO PLAY DUMB
14 WITH INVESTIGATORS WHEN THEY INTERVIEWED HIM. HE CLAIMED
15 THAT THE ONLY REASON HE GOT CAUGHT WITH CHILD PORNOGRAPHY
16 WAS BECAUSE HE FORGOT TO TURN HIS COMPUTER OFF, THAT HE
17 HAD MORE CHILD PORNOGRAPHY THAN WHAT WAS FOUND, AND HE
18 SPECIFICALLY TALKED ABOUT HIDING CERTAIN FILES IN SECRET
19 FILES WITH NAMES LIKE SWANKY.

20 HE ALSO INDICATED THAT AT ONE POINT HE HAD
21 OVER 1,000 IMAGES OF CHILD PORNOGRAPHY VIDEOS, BUT THOSE
22 ARE THINGS THAT THE INVESTIGATORS HAD NOT FOUND.

23 WITH RESPECT TO THE UNITED STATES' LAWS ON
24 CHILD PORNOGRAPHY, MR. WALCOTT INDICATED THAT HE
25 DISAGREED WITH THE UNITED STATES' LAWS ON CHILD

1 PORNOGRAPHY AND LAWS STATING THAT THE UNITED STATES
2 SHOULD BE ABLE TO DICTATE AT WHAT AGE SHOULD HAVE SEX
3 WITH.

4 AND THEN, YOUR HONOR, WITH RESPECT TO MR.
5 WALCOTT'S KNOWLEDGE, I BELIEVE ONE OF THE LETTERS
6 INDICATES THAT HE HAD NO KNOWLEDGE OF THE WARRANT FOR
7 ARREST THAT WAS OUT FOR HIM.

8 MR. WALCOTT ALSO INDICATED THAT HE WAS
9 INFORMED BY ONE OF HIS FAMILY MEMBERS THAT MARSHALS WERE
10 LOOKING FOR HIM AND THAT WAS PRIOR TO HIM LEAVING THE
11 STATE AND GOING TO TEXAS WHERE HE WAS ARRESTED. AND HIS
12 WIFE DID NOT KNOW BUT HIS WARRANT STATUS OR ABOUT THE
13 CHILD PORNOGRAPHY.

14 SO, YOUR HONOR, I JUST WANTED TO POINT THOSE
15 OUT BECAUSE THOSE STATEMENTS BY MR. WALCOTT APPEAR TO BE
16 CONTRADICTORY TO THE MANNER IN WHICH HE WAS DEPICTED IN
17 HIS CHARACTER REFERENCES AND ALSO CONTRADICTORY TO THE
18 MANNER IN WHICH MR. WALCOTT APPEARS TO BE DEPICTING
19 HIMSELF TO THE COURT.

20 IN THIS SITUATION, HE HAD OVER 102 IMAGES OR
21 VIDEOS OF CHILD PORNOGRAPHY, MANY OF WHICH DEPICTED
22 CHILDREN UNDER THE AGE OF 12, SOME OF WHOM WERE TODDLERS
23 ENGAGED IN SEXUAL ACTS WITH ADULTS AND IN OBVIOUS PAIN,
24 AND FOR THAT REASON AND FOR SOME OF THE THINGS THAT ARE
25 OUTLINED IN THE PSR, WE BELIEVE THAT THE RECOMMENDED

1 SENTENCE OF 10 YEARS WHICH IS THE MAXIMUM AND THEN TEN
2 YEARS OF SUPERVISED RELEASE IS APPROPRIATE.

3 THE COURT: THANK YOU.

4 MR. WATERS: YOUR HONOR, IF I MAY BE HEARD
5 BRIEFLY JUST AS TO THE STATEMENTS THAT WERE PURPORTEDLY
6 MADE BY MR. WALCOTT. THESE STATEMENTS, I BELIEVE, WERE
7 FROM A DEBRIEFING INTERVIEW FROM A CELLMATE OF MR.
8 WALCOTT'S. THAT INTERVIEW -- NOTES FROM THAT INTERVIEW
9 WERE PROVIDED TO THE DEFENDANT AND TO THE PROBATION
10 OFFICER.

11 THE REASON THEY DON'T APPEAR IN THE PSR IS
12 THAT THE PROBATION OFFICER INQUIRED AS TO WHETHER THIS
13 WAS RELIABLE INFORMATION, AND THE GOVERNMENT DID NOT
14 STATE THAT IT WAS RELIABLE.

15 AGAIN, I AM NOT OPPOSING THE PLEA AGREEMENT OR
16 THE RECOMMENDED SENTENCE THEREIN, BUT SIMPLY WANTED TO
17 NOTE THAT THE STATEMENTS THE GOVERNMENT IS NOW TRYING TO
18 BRING BEFORE THE COURT ARE ONES THAT THEY HAD AN
19 OPPORTUNITY TO HAVE INCLUDED IN THE PRESENTENCE REPORT
20 AND FAILED TO.

21 THE COURT: THANK YOU, MR. WATERS.

22 ALL RIGHT, MR. WALCOTT. THE COURT RECOGNIZES
23 ITS OBLIGATION TO IMPOSE A SENTENCE SUFFICIENT, BUT NOT
24 GREATER THAN NECESSARY, TO COMPLY WITH THE PURPOSES SET
25 FORTH IN THE STATUTE.

1 I HAVE CONSIDERED ALL ARGUMENTS THAT MR.
2 WATERS HAS MADE ON YOUR BEHALF. I HAVE CONSIDERED YOUR
3 STATEMENT. I HAVE CONSIDERED THE POSITION OF THE UNITED
4 STATES. BUT I HAVE TAKE MR. WATERS' POINT ABOUT THE
5 RELIABILITY OF AT LEAST SOME OF THE STATEMENTS MADE
6 DURING MS. MCCRAY-JONES' PRESENTATION, AND I HAVE NOT
7 CONSIDERED THOSE. I HAVE CONSIDERED THE ADVISORY
8 GUIDELINE RANGE.

9 AMONG OTHER THINGS, I AM TO CONSIDER THE
10 NATURE AND CIRCUMSTANCES OF THE OFFENSE, AND THE HISTORY
11 AND CHARACTERISTICS OF THE DEFENDANT, THE NEED FOR THE
12 SENTENCE IMPOSED TO REFLECT THE SERIOUSNESS OF THE
13 OFFENSE, TO PROMOTE RESPECT FOR THE LAW, AND TO PROVIDE
14 JUST PUNISHMENT, THE NEED FOR THE SENTENCE IMPOSED TO
15 DETER OTHERS WHO MIGHT CHOOSE TO ENGAGE IN THE CRIMINAL
16 BEHAVIOR THAT BRINGS YOU HERE, THE NEED FOR THE SENTENCE
17 IMPOSED TO PROTECT THE PUBLIC FROM FURTHER CRIME BY YOU,
18 THE NEED FOR THE SENTENCE IMPOSED TO PROVIDE YOU WITH
19 NEEDED EDUCATIONAL OR VOCATIONAL TRAINING, MEDICAL CARE,
20 OR OTHER CORRECTIONAL TREATMENT IN THE MOST EFFECTIVE
21 MANNER.

22 THE STATUTE LISTS A NUMBER OF OTHER FACTORS.
23 I HAVE CONSIDERED ALL OF THOSE, ALTHOUGH I WON'T MENTION
24 EACH ONE INDIVIDUALLY.

25 AS FOR THE NATURE AND CIRCUMSTANCES OF THE

1 OFFENSE, YOU DID POSSESS CHILD PORNOGRAPHY. THE DETAILS
2 ARE SET OUT IN THE REPORT. IT WASN'T SOME KIND OF
3 ACCIDENTAL POSSESSION. IT WAS A KNOWN POSSESSION. MS.
4 MCCRAY-JONES TOUCHED ON THAT. THE REPORT DETAILS IT.

5 THE PORNOGRAPHY INVOLVES CHILDREN. THE WHOLE
6 NOTION OF CONSENT, A PREPUBESCENT CHILD CONSENTING IS
7 PREPOSTEROUS. IT'S ADULTS RAPING CHILDREN AND
8 VIDEOTAPING IT AND SENDING IT OUT ON THE INTERNET FOR
9 PEOPLE TO COLLECT AND LOOK AT AND FIND SOMETHING
10 WORTHWHILE IN IT. IT'S DISGRACEFUL BEHAVIOR.

11 THOSE WHO MANUFACTURE IT -- I AM NOT SAYING
12 YOU ARE A MANUFACTURER, BUT THOSE WHO COLLECT IT AND
13 POSSESS IT FUEL THE ABUSE OF CHILDREN, AND IT CAN NEVER
14 BE TAKEN DOWN FROM THE INTERNET.

15 IF YOU ARE A CHILD THAT HAS BEEN RAPED AND IT
16 HAS BEEN VIDEOTAPED AND IT'S ON THE INTERNET, IT'S OUT
17 THERE FOREVER. AND YOU KNOW IT. AND YOU GO THROUGH YOUR
18 LIFE KNOWING IT. IT'S HORRIBLE. IT'S HORRIBLE BEHAVIOR.
19 SO IT IS A SERIOUS OFFENSE MERITING SERIOUS PUNISHMENT.

20 YOU KNEW BETTER. YOU ARE AN EDUCATED MAN.
21 YOU SERVED IN THE ARMY. YOU SUSTAINED A MILITARY INJURY.
22 I HAVE TAKEN THAT INTO ACCOUNT. I HAVE TAKEN INTO
23 ACCOUNT YOUR ENTIRE HISTORY AND CHARACTERISTICS, THE GOOD
24 AND THE BAD. MR. WATER'S TOUCHED ON THE REALITY THAT YOU
25 HAD ONE MISDEMEANOR AND IT WAS A SUPERVISED RELEASE

1 PROBATION COMPONENT TO THAT AND THAT IS WHY YOU ARE NOT A
2 I.

3 THE PARTIES AGREED TO A RESOLUTION OF THIS
4 THAT IS SUFFICIENT, BUT NOT GREATER THAN NECESSARY. I
5 HAVE READ ALL THE LETTERS THAT WERE SUBMITTED, AND YOU
6 STILL HAVE FAMILY SUPPORT. I SUSPECT THE FAMILY IN SOME
7 WAYS DON'T KNOW THE DETAILS -- AND IT'S A GOOD THING --
8 OF WHAT IS IN THE VIDEOS AND THE IMAGES.

9 THERE IS A NEED TO IMPOSE JUST PUNISHMENT FOR
10 THIS VERY SERIOUS OFFENSE. I DO THINK A SENTENCE AT THE
11 TOP OF THE ADVISORY GUIDELINE RANGE IS THE SENTENCE THAT
12 IS SUFFICIENT, BUT NOT GREATER THAN NECESSARY, TO
13 INCAPACITATE THE DEFENDANT, TO REFLECT THE SERIOUS NATURE
14 OF THE OFFENSE, AND TO TAKE INTO ACCOUNT HIS HISTORY AND
15 CHARACTERISTICS.

16 HAVING FULLY CONSIDERED THE ENTIRE RECORD IN
17 THIS CASE, PURSUANT TO THE SENTENCING REFORM ACT OF 1984
18 AND IN ACCORDANCE WITH THE SUPREME COURT'S DECISION IN
19 UNITED STATES VERSUS BOOKER, IT'S THE JUDGMENT OF THE
20 COURT THAT THE DEFENDANT, MICHAEL ANTHONY WALCOTT, IS
21 HEREBY COMMITTED TO THE CUSTODY OF THE BUREAU OF PRISONS
22 TO BE IMPRISONED FOR A TERM OF 120 MONTHS. PURSUANT TO
23 THE PLEA AGREEMENT, COUNTS 1 THROUGH 11 ARE DISMISSED.

24 UPON RELEASE FROM IMPRISONMENT, YOU SHALL BE
25 PLACED ON SUPERVISED RELEASE FOR 10 YEARS.

1 WITHIN 72 HOURS OF RELEASE FROM THE CUSTODY OF
2 THE BUREAU OF PRISONS, YOU SHALL REPORT IN PERSON TO THE
3 PROBATION OFFICE IN THE DISTRICT TO WHICH YOU ARE
4 RELEASED.

5 WHILE ON SUPERVISED RELEASE, YOU SHALL NOT
6 COMMIT ANOTHER FEDERAL, STATE OR LOCAL CRIME.

7 YOU SHALL NOT POSSESS A FIREARM OR DESTRUCTIVE
8 DEVICE.

9 YOU SHALL NOT ILLEGALLY POSSESS A CONTROLLED
10 SUBSTANCE.

11 YOU SHALL COMPLY WITH THE STANDARD CONDITIONS
12 OF THE DISTRICT AND THE FOLLOWING ADDITIONAL CONDITIONS
13 WHICH THE COURT FINDS APPROPRIATE AFTER FULLY CONSIDERING
14 ALL THE FACTORS UNDER 18 U.S.C. SECTION 3553(A),
15 INCLUDING THE NATURE OF THE OFFENSE, THE DOMESTIC
16 VIOLENCE HISTORY, THE USE OF THE COMPUTER, THE NEED FOR
17 SEX OFFENDER TREATMENT.

18 YOU SHALL SUBMIT TO A PSYCHOSEXUAL EVALUATION
19 BY A MENTAL HEALTH PROFESSIONAL AS DIRECTED BY PROBATION,
20 PARTICIPATE IN A PROGRAM OF MENTAL HEALTH AS DIRECTED BY
21 PROBATION, PARTICIPATE IN A SEX OFFENDER TREATMENT
22 PROGRAM.

23 YOU WILL SUBMIT TO PHYSIOLOGICAL TESTING AS
24 DIRECTED BY PROBATION.

25 YOUR RESIDENCE AND EMPLOYMENT SHALL BE

1 PRE-APPROVED BY PROBATION. ANY PROPOSED CHANGE IN
2 RESIDENCE OR EMPLOYMENT MUST BE PROVIDED TO PROBATION AT
3 LEAST TEN DAYS BEFORE THE CHANGE AND PRE-APPROVED BEFORE
4 THE CHANGE.

5 YOU SHALL NOT POSSESS ANY MATERIAL DEPICTING
6 AND/OR DESCRIBING CHILD PORNOGRAPHY OR SIMULATING CHILD
7 PORNOGRAPHY AS DEFINED IN 18 U.S.C. SECTION 2256.

8 YOU SHALL NOT ENTER ANY LOCATION WHERE SUCH
9 MATERIAL CAN BE ACCESSED, OBTAINED OR VIEWED.

10 YOU SHALL COMPLY WITH THE REQUIREMENTS OF THE
11 SEX OFFENDER REGISTRATION AND NOTIFICATION ACT AS
12 DIRECTED BY PROBATION.

13 YOU SHALL NOT USE, PURCHASE, POSSESS, PROCURE
14 OR OTHERWISE OBTAIN ANY COMPUTER OR ELECTRONIC DEVICE
15 THAT CAN BE LINKED TO ANY COMPUTER NETWORK UNLESS
16 APPROVED BY PROBATION TO ENSURE COMPLIANCE WITH
17 SUPERVISION.

18 YOU WILL SUBMIT TO UNANNOUNCED SEARCHES OF ANY
19 COMPUTER OR COMPUTER EQUIPMENT, INCLUDING MOBILE PHONES,
20 AT THE DIRECTION OF PROBATION, WHICH COULD INCLUDE
21 PROBATION USING COMPUTER MONITORING TECHNOLOGY AT THE
22 DIRECTION OF PROBATION.

23 YOU SHALL CONSENT TO THE INSTALLATION OF
24 SYSTEMS OR SOFTWARE THAT WILL ALLOW PROBATION TO MONITOR
25 COMPUTER USE ON ANY COMPUTER THAT YOU OWN OR ARE

1 AUTHORIZED TO USE. YOU WILL PAY THE COSTS OF THAT
2 MONITORING.

3 YOU SHALL NOT USE, POSSESS OR CONTROL ANY
4 COMPUTER BASED COUNTER FORENSIC TOOLS. YOU SHALL NOT
5 HAVE ANY SOCIAL NETWORKING ACCOUNTS UNLESS PRE-APPROVED
6 BY PROBATION.

7 YOU SHALL NOT -- EXCUSE ME.

8 YOU SHALL SUBMIT TO A SEARCH OF YOUR PERSON,
9 HOUSE, RESIDENCE, VEHICLES, PAPERS, COMPUTERS OR OTHER
10 ELECTRONIC COMMUNICATION OR DATA DEVICE AT ANY TIME WITH
11 OR WITHOUT A WARRANT. THE SEARCH MAY BE CONDUCTED BY LAW
12 ENFORCEMENT OR PROBATION WITH REASONABLE SUSPICION
13 CONCERNING VIOLATION OF CONDITIONS OF SUPERVISION IN THE
14 LAWFUL DISCHARGE OF THE PROBATION OFFICER'S DUTY.

15 YOU SHALL COOPERATE IN THE COLLECTION OF DNA.

16 YOU WILL PAY A SPECIAL ASSESSMENT OF \$100. I
17 AM NOT GOING TO IMPOSE A FINE.

18 MR. WALCOTT, YOU CAN APPEAL YOUR CONVICTION IF
19 YOU BELIEVE THAT YOUR GUILTY PLEA WAS SOMEHOW UNLAWFUL OR
20 INVOLUNTARY, OR IF THERE IS SOME OTHER FUNDAMENTAL DEFECT
21 IN THE PROCEEDING THAT WAS NOT WAIVED BY YOUR GUILTY
22 PLEA.

23 YOU ALSO HAVE A STATUTORY RIGHT TO APPEAL YOUR
24 SENTENCE UNDER CERTAIN CIRCUMSTANCES, PARTICULARLY IF YOU
25 THINK YOUR SENTENCE IS CONTRARY TO LAW.

1 HOWEVER, YOU DID ENTER INTO A PLEA AGREEMENT
2 THAT CONTAINS AN APPELLATE WAIVER. IN LIGHT OF YOUR
3 SENTENCE, I BELIEVE YOU HAVE WAIVED YOUR RIGHT TO APPEAL
4 YOUR SENTENCE.

5 IF YOU BELIEVE THE WAIVER IS UNENFORCEABLE OR
6 INAPPLICABLE FOR ANY REASON, YOU CAN PRESENT THAT THEORY
7 TO THE APPELLATE COURT.

8 WITH FEW EXCEPTIONS, ANY NOTICE OF APPEAL MUST
9 BE FILED WITHIN 14 DAYS OF THE JUDGMENT BEING ENTERED ON
10 THE DOCKET IN YOUR CASE. IF YOU ARE UNABLE TO PAY THE
11 COSTS OF AN APPEAL, YOU MAY APPLY FOR LEAVE TO APPEAL IN
12 FORMA PAUPERIS.

13 IF YOU SO REQUEST, THE CLERK OF COURT WILL
14 PREPARE AND FILE NOTICE OF APPEAL ON YOUR BEHALF.

15 DID YOU WANT ME TO MAKE A RECOMMENDATION AS TO
16 WHERE HE SERVES?

17 MR. WATERS: YES, YOUR HONOR. WE WOULD ASK IF
18 THE COURT COULD RECOMMEND BUTNER, AND ALSO ACCESS TO
19 VOCATIONAL AND EDUCATIONAL OPPORTUNITIES AS AVAILABLE.

20 THE COURT: I WILL RECOMMEND FCI-BUTNER AND
21 RECOMMEND VOCATIONAL AND EDUCATIONAL OPPORTUNITIES FOR
22 MR. WALCOTT.

23 ANYTHING ELSE FROM THE UNITED STATES?

24 MS. MCCRAY-JONES: NO, YOUR HONOR.

25 THE COURT: I THANK COUNSEL FOR THEIR WORK

1 HERE TODAY. THAT WILL CONCLUDE THE MATTER INVOLVING MR.
2 WALCOTT. GOOD LUCK TO YOU, SIR.

(WHEREUPON, THE PROCEEDINGS WERE ADJOURNED.)

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CERTIFICATE

10 THIS IS TO CERTIFY THAT THE FOREGOING
11 TRANSCRIPT OF PROCEEDINGS TAKEN IN THE UNITED STATES
12 DISTRICT COURT IS A TRUE AND ACCURATE TRANSCRIPTION OF
13 THE SHORTHAND NOTES OF THE PROCEEDINGS TAKEN BY ME IN
14 MACHINE SHORTHAND AND TRANSCRIBED BY COMPUTER UNDER MY
15 SUPERVISION.

DATED THIS 6TH DAY OF JANUARY, 2015.

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/S/ SHARON K. KROEGER
COURT REPORTER